

Supreme Court, U. S.
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MICHAEL DODAK, JR., CLERK

No. 77-348

**IN THE SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1977

RICHARD T. TRACY, SR., PETITIONER

v.

RODGER A. GOLSTON, ET AL., RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

**BRIEF FOR RESPONDENTS
IN OPPOSITION**

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ARGUMENT

Petitioner has requested this Court to grant a Writ of Certiorari before judgment to the United States Court of Appeals for the Ninth Circuit to review a case presently on appeal to that Court from a decision of the United States District Court for the District of

Arizona.¹ All briefs have been submitted to the Court of Appeals. Oral argument, however, has not yet been scheduled and no decision has been reached by that Court. Respondents maintain that it would be a totally unwarranted and serious departure from normal appellate processes for the Court to grant a Writ of Certiorari before judgment in this case.

This Court has the power to review cases in the United States Courts of Appeals by Writ of Certiorari prior to judgment. 28 U.S.C. §1254(1) (1970). However, according to the rules of this Court:

"A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this Court." U.S. Sup. Ct. Rule 20.

Thus, in cases of great public importance, interest, or emergency, such as the steel seizure case, *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952), or the Watergate tapes case, *United States v. Nixon*, 418 U.S. 683 (1974), this Court has exercised this extraordinary right to take a case from a court of appeals prior to judgment. The instant case, however, in no

¹ Petitioner also is requesting that this Court grant a Writ of Certiorari before judgment to the Arizona Supreme Court in a somewhat related case, *Richard T. Tracy, Sr. v. William P. Dixon, et al.*, Nos. 12760 and 13195. Counsel for Respondents in the case pending before the Ninth Circuit have not participated in the Arizona Supreme Court action and, therefore, make no response herein to that portion of Petitioner's Petition relating to the state court proceedings.

way approaches the high level of public importance met by cases such as *Youngstown* or *Nixon* so as to justify immediate intervention by the United States Supreme Court.

This case involves a civil rights claim brought under 42 U.S.C. §§1983 and 1985(3) (1970) by a former judge of the Phoenix City Court alleging that the failure of the Phoenix Judicial Selection Advisory Board to recommend him for reappointment to the bench after expiration of his four-year term and the subsequent failure of the Phoenix City Council to reappoint him to the bench, deprived him of a property interest protected by the Fourteenth Amendment to the United States Constitution.

Civil rights cases involving alleged property interests in employment are neither new nor unusual. The legal standards to be applied in such cases, and the standards upon which Petitioner's case will be decided, have been announced by this Court in *Perry v. Sindermann*, 408 U.S. 593 (1972), and *Board of Regents v. Roth*, 408 U.S. 564 (1972). Those standards were recently reexamined and reaffirmed in *Codd v. Velger*, 45 U.S.L.W. 4175 (Feb. 22, 1977), and *Bishop v. Wood*, 426 U.S. 341 (1976).

There is no reason to suppose that the Court of Appeals for the Ninth Circuit will fail to apply correctly the principles already enunciated in the foregoing cases, if given the opportunity. Sound judicial economy and discretion dictate that the Ninth Circuit be afforded that opportunity in this case. Then, if Petitioner believes that the decision of the Ninth Circuit is in conflict with applicable Supreme Court decisions, Petitioner can present his Petition for

Writ of Certiorari in the normal course of appellate review under Rule 19 of the United States Supreme Court Rules.

CONCLUSION

The Petition for a Writ of Certiorari before judgment should be denied.

Respectfully submitted,

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